

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

JUSTIN D. HODGES AND ALANNA
HODGES, INDIVIDUALLY AND AS
NEXT FRIENDS OF L. H., A MINOR,

Plaintiffs,

VS.

GRACO CHILDREN'S PRODUCTS, INC.,

Defendant.

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Civil Action No. 4:08-cv-00121-DDB

PLAINTIFFS' SECOND AMENDED COMPLAINT

TO THE HONORABLE UNITED STATES JUDGE OF SAID COURT:

COMES NOW, JUSTIN D. HODGES and ALANNA, HODGES, both in their individual capacities and as next friends of L.H., a minor child (hereinafter referred to as "Plaintiffs"), and respectfully file their Second Amended Complaint against GRACO CHILDREN'S PRODUCTS, INC. (hereinafter referred to as "Defendant"), and in support hereof would state and show the following:

A. Parties

1. Plaintiffs Justin D. Hodges and Alanna Hodges are husband and wife, and they appear in this action in their individual capacity, as well as next friends of L.H., their minor child. They reside in and are citizens of Collin County, McKinney, Texas.

2. Defendant Graco Children's Products, Inc. is a foreign corporation organized and existing according to the laws of the State of Delaware. Service of process upon this Defendant is not necessary as Defendant has already been served and filed an Answer.

B. Jurisdiction

3. This court has jurisdiction over the lawsuit under the provisions of 28 U.S.C. Section 1332. The parties to this lawsuit are citizens of different states, and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

C. Facts

4. On April 16, 2007, Alanna Hodges was driving in a 2005 Honda Accord (VIN # 1HGCM56725A052316) traveling northbound on Watters Road at the intersection of SH 121 in Allen, Collin County, Texas, when she was struck from behind by another vehicle being driven by Chance Alan Lynch. This caused her to strike the light standard that supports the traffic signal on the northeast corner of the intersection. Alanna Hodges' vehicle was ultimately crushed between Mr. Lynch's vehicle and the light standard.

5. At the time of the accident, Plaintiff Alanna Hodges was properly wearing her restraint system. Her minor son, L. H., was properly restrained in a Graco, Snug Ride, model number 7449BKW2, serial number JJ1108050836 infant seat.

6. However, despite being properly restrained, L. H., a minor, sustained severe injuries when his car seat failed to protect him.

D. Cause(s) of Action As To Defendant Graco Children's Products, Inc.

7. It was entirely foreseeable to and well-known by the Defendant that accidents and incidents involving its child seats, such as occurred herein, would on occasion take place during the normal and ordinary use of said child seats.

8. The injuries and damages complained of herein occurred because the child seat in question was not reasonably fit for unintended, but clearly foreseeable accidents. The child seat in question was unreasonably dangerous in the event it should be involved in an incident.

9. Defendant designed, manufactured, marketed, assembled, and/or tested said child seat in question to be unreasonably dangerous and defective within the meaning of Section 402(A) Restatement (Second) Torts, in that the child seat was unreasonably dangerous as designed, manufactured, assembled, marketed, and/or tested because of the following defects:

- a. the subject child seat fails to contain a tether which will enable the caregiver to secure the child seat from pitching upward and rearward;
- b. the subject child seat's routing for the vehicle seat belt allows for excessive movement of the seat laterally and front to rear;
- c. the subject child seat violates principles of crashworthiness in that inadequate restraint is provided;
- d. the subject child seat violates the purpose of a child seat;
- e. the subject child seat fails to provide proper restraint; and/or
- f. the subject child seat breaches the implied warranty of fitness for a particular purpose and of merchantability.

10. Defendant was negligent in the design, manufacture, assembly, marketing, and/or testing of the child seat in question.

11. The foregoing acts and/or omissions of Defendant were a producing and/or proximate cause of the Plaintiffs' damages.

12. The foregoing acts and/or omissions of Defendant were a producing and/or proximate cause of Plaintiff L.H.'s injuries.

E. Damages to Plaintiffs

13. As a result of the acts and/or omissions of Defendant, L.H., a minor child, has suffered the following: physical pain and mental anguish in the past and future, disfigurement in the past and future, physical impairment in the past and future, and loss of earning capacity after he reaches the age of eighteen years. In addition, after he reaches age 18, L.H., will be responsible for his medical expenses.

14. As a result of the acts and/or omissions of Defendant, Plaintiffs Justin D. Hodges and Alanna Hodges have become obligated to pay necessary and reasonable medical expenses in the past and will, in all likelihood, into the future for their child L.H. After age 18, L.H. will be responsible for his medical expenses.

15. As a result of the acts and/or omissions of Defendant, Plaintiffs Justin D. Hodges and Alanna Hodges have suffered loss of services of their minor child, L.H., both in the past and until L.H. turns age 18.

16. The above and foregoing acts and/or omissions of Defendant, resulting in the injuries to L.H., have caused actual damages to Plaintiffs in an amount in excess of the minimum jurisdictional limits of this Court.

F. Prayer

17. For these reasons, Plaintiffs ask for judgment against Defendant for
- a. actual damages;
 - b. prejudgment and post-judgment interest beginning April 16, 2007;
 - c. costs of suit; and
 - d. all other relief the Court deems proper.

Respectfully submitted,

The TRACY Firm

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record on this 3rd day of March, 2009.

/s E. Todd Tracy
E. Todd Tracy
Andrew G. Counts